

### **REMARKS/ARGUMENTS**

Claims 1-3, 5-12, 14, 15, and 18-26 are pending in this present application. Claims 1, 5, 12, 18, 20, and 24 have been amended. Support for the amendments of claims can be found, for example, in the illustrative embodiments discussed in Paragraphs [0029]-[0033] and FIG. 3. No new matter has been added. Reconsideration of claims 1-3, 5-12, 14, 15, and 18-26 of the present application is respectfully requested.

#### **Rejections of claims 1-3, 5-12, 14, 15, and 18-26 under 35 U.S.C. §103(a) over Baxter and Gajjar**

The Action rejected claims 1-3, 5-12, 14, 15, and 18-26 under 35 U.S.C. §103(a) for allegedly being obvious over US. Patent Publication No. 2003/0229637 to Baxter et al. ("Baxter") in view of U.S. Patent Publication No. 2002/0174306 to Gajjar et al. ("Gajjar").

A. Independent Claims 1, 12, 18, 20, and 24

Claim 1 is not obvious over Baxter and Gajjar at least for the reason that Baxter and Gajjar, separately and in combination, fail to teach or suggest all of the features of Applicant's claim.

Claim 1 has been amended to recite:

"communicating said profile information to at least one second data storage systems;

said at least one second data storage system generating a selection indication based on said profile information and on selection criteria that is maintained at said at least one second data storage system;

said at least one second data storage system communicating its selection indication to said first data storage system;" (Emphasis added).

See also independent claims 12, 18, 20, and 24.

1. "second data storage systems generating a selection indication " not shown

An important aspect of the present invention is that file selection is determined by the recipient of the files. The independent claims as previously presented had been amended to explicitly recite limitations to this effect. The independent claims as currently amended further

limit the scope of the claims to the receiving storage system "generating a selection indication" where the selection indication is used in the source storage system to determine which files are to be sent to the receiving storage system.

Baxter is directed to a method and apparatus for safeguarding files. In FIG. 1, Baxter inputs files to be safeguard in **computer 1**. Software agent in **computer 1** reviews designated locations at predetermined time. After the reviewing process, computer 1 selects and copies the files to computer 2. Paragraph [0007] of Baxter describes selecting files **based on predetermined selection criteria**. No where does Baxter teach, or even suggest, that computer 2 (the recipient) generates selection criteria. No where does Baxter teach, or even suggest generating selection criteria based on the profile information and selection criteria maintained at computer 2. Baxter therefore does not show or suggest the recited "second data storage system generating a selection indication based on said profile information and on selection criteria that is maintained at said second data storage system."

The Action does not rely on Gajjar to reject the feature of "receiving a selection indication from said second data storage system, wherein the selection indication is based upon selection criteria maintained at second data storage system." Gajjar's Paragraphs [0006]-[0009] describe using storage provisioning policies to select and provision appropriate storage for applications. Gajjar only uses storage heuristic metadata to express a rule or constraint as a function of a storage attribute. Nothing in Gajjar's description or drawings shows the recited generating a selection indication based on the profile information and selection criteria maintained at the second data storage system.

Paragraphs [0008] and [0009] of Gajjar were cited for teaching "communicating profile information to said second storage system." First, paragraphs [0008] and [0009] describe "storage profiles" and how storage provisioning policies are used with the profiles to select suitable storage systems. There is no discussion of communicating profiles from one storage system to another. Moreover, the storage profiles have nothing to do with selection of files, but rather with selection of storage systems in accordance with storage provisioning policies.

Secondly, Gajjar in combination with Baxter does not render obvious the pending claims. Baxter clearly teaches that computer 1 determines files to be send to computer 2 (see paragraph [0007]). Gajjar says nothing about a storage system selecting files, but rather is about selecting suitable storage systems. Therefore, the combination does not teach or render obvious the recited limitations of:

“communicating said profile information to at least one second data storage systems;  
said at least one second data storage system generating a selection indication based on said profile information and on selection criteria that is maintained at said at least one second data storage system;”

**2. "said at least one second data storage system communicating its selection indication to said first data storage system" not shown**

As noted above, a particularly relevant aspect of the present invention as recited in the claims is that the criteria for file selection is determined by the receiving storage system, not by the source storage system. The independent claims have been further amended to more narrowly claim this aspect of the present invention.

A review of cited paragraph [0007] of Baxter and Baxter's FIG. 1 shows that computer 2 simply **waits** for files to arrive after computer 2 starts. Computer 2 receives files from computer 1 and then processes the files. Computer 2 does **not** send a selection indication to computer 1 for selectively copying files to computer 2. Accordingly, Baxter also fails to teach or suggest said at least one second data storage system communicating its selection indication to said first data storage system.

Since Gajjar does not involve generating a selection indication for selecting files as set forth above, Gajjar also fails to show receiving a selection indication by the first data storage system from said second storage system. Recall, that Gajjar is about selecting and provisioning suitable storage for an application, and is not about file selection.

For at least the reasons set forth above, claim 1 is not obvious over the combined teachings of Baxter and Gajjar. Withdrawal of the rejection of claim 1 is respectfully requested.

Like claim 1, independent claims 12, 18, 20, and 24 are not obvious over Baxter and Gajjar. Withdrawal of the rejections of claims 12, 18, 20 and 24 are respectfully requested.

B. Dependent Claims 2, 3, 5-8, 9-11, 14, 15, and 18-26

Claims 2, 3, and 5-8 depend from claim 1, and are, therefore, not obvious over the combined teachings of Baxter and Gajjar by virtue of their dependencies.

Claims 14 and 15 depend from claim 12; claims 9-11 and 19 depend from claim 18; claims 21-23 depend from claim 20; and claims 25 and 26 depend from claim 24. The claims are not obvious over the combined teachings of Baxter and Gajjar by virtue of their dependencies.

**Rejections of claims 5-12, 14, 15, and 18-26 under 35 U.S.C. §103(a) over Baxter, Gajjar and Wisner**

The Action further rejected claims 5-12, 14, 15, and 18-26 under 35 U.S.C. §103(a) for allegedly being obvious over Baxter in view of Gajjar and further in view of U.S. Patent Publication No. 2002/0163910 to Wisner et al. ("Wisner").

A. Dependent Claims 5-8

Dependent claims 5-8 depend from claim 1, reciting generating a selection indication based on the profile information and selection criteria maintained at said second data storage system and receiving the selection indication by the first data storage system from said second data storage system. Claims 5-8 are not obvious over the combined teachings of Baxter, Gajjar and Wisner at least for the reason that Baxter, Gajjar and Wisner, separately and in combination, fail to teach or suggest all of the features of Applicant's claims.

As set forth above in conjunction with claim 1, Baxter and Gajjar fails to teach or suggest the recited limitations of generating a selection indication based on the profile information and selection criteria maintained at said second data storage system and receiving the selection indication by the first data storage system from said second data storage system.

Wisner is directed to a system and method using a switch to provide access to resource. Wisner's Paragraph [0057] only shows that first data storage unit 130 transmits replication information to second data storage unit 132. First data storage unit 132 waits to

receive an acknowledgment from second data storage unit 132 indicating that the replication is received. Wisner, however, does not teach, or even suggest, calculating a selection indication based on the profile information and selection criteria maintained at said second data storage system and receiving the selection indication by the first data storage system from said second data storage system. Accordingly, Wisner also fails to teach or suggest the recited limitations of "calculating a selection indication based on the profile information and selection criteria maintained at said second data storage system" and "receiving the selection indication by the first data storage system from said second data storage system."

For at least the reasons set forth above, claims 5-8 are not obvious over the art of record. Withdrawal of the rejections of claims 5-8 is respectfully requested.

B. Claims 9-12, 14, 15, and 18-26

As the reasons set forth above in conjunction with claims 5-8, independent claims 12, 18, 20, and 24 are not obvious over the combined teachings of Baxter, Gajjar and Wisner. Withdrawal of the rejections of claims 12, 18, 20, and 24 is respectfully requested.

Claims 14, and 15 depends from claim 12. Claims 9-11, and 19 depend from claim 18. Claims 21-23 depend from claim 20. Claims 25, and 26 depend from claim 24. The dependent claims are not obvious over the art of record by virtue of their dependencies. Withdrawal of the rejections of these claims are respectfully requested.

From the foregoing, reconsideration of the rejections of claims 1-3, 5-12, 14, 15, and 18-26 is respectfully requested.

**CONCLUSION**

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,

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